



IN THE

Supreme Court of the United States

No.

QUALITY AND SERVICE LAUNDRY, INC., *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Error to be Assigned.

The Circuit Court of Appeals erred in enforcing the order of the National Labor Relations Board to reinstate certain of petitioner's employees.

ARGUMENT.

This Case Involves a Question of Law.

The effect of the action of the Circuit Court of Appeals in affirming the decision of the National Labor Relations Board and in enforcing its order is to establish the rule that employees while on strike may collect, retain, and convert to their own use, money belonging to their employer and be entitled to reinstatement. The Circuit Court refused to reverse the National Labor Relations Board because:

- (1) A controversy existed as to what each employee should account for;
- (2) It appeared that the shortage was covered by a cash bond; and
- (3) The Board found that these employees "acted in good faith and with color of legal right; and the respondent does not plead their alleged wrong doing in good faith, but rather as a further device to avoid the consequences of its unfair labor practices".

It is respectfully submitted that this involves a question of law. Regard should have been had for the Maryland Statute defining and providing a penalty for the unlawful acts sanctioned by the decision. The Court, therefore, should have reversed the National Labor Relations Board.

Sec. 140, Art. 27, Annotated Code of Maryland.
Crouse v. State of Maryland, 163 Md. 431.

In its decision the National Labor Relations Board (P. 13) said that uncontroverted evidence was introduced by Board's counsel to show that the money belonging to the petitioner was retained by the strikers solely to protect what they conceived to be well founded claims which they had against the petitioner for salary and commissions; and that they had cash bonds to cover any money which they had collected and retained. This, we think, the Court will hold to be immaterial.

In most all cases of embezzlement from employers, there is a bond to protect the employer. But this does not give the employee the right to take and keep the employer's money.

From this it is clear that the question here involved is more than a mere question of fact. The facts cited in the Board's decision indicate a clear violation of the criminal law of Maryland; and the sanction of such a violation by a Federal Governmental Agency, and in turn by a Federal

Appellate Court, is repugnant to the peace, government and dignity of the State of Maryland.

**This Decision of the United States Circuit Court of Appeals
for the Fourth Circuit is in Conflict with a Decision of
the United States Circuit Court of Appeals for the Sixth
Circuit.**

In the decision of the United States Circuit Court of Appeals for the Sixth Circuit, one Casterline, an employee of Thompson Products, Inc., took an ornamental lamp belonging to a caterer who had provided food and decorations for a dinner given for the employees of said firm. This lamp had a fair market value of fifty cents. He freely admitted taking the lamp with the intent to appropriate it to his own use. When charged with taking the lamp he offered to pay for it or return it, and did abandon it in the banquet hall.

The Court held in that case that an employer may properly refuse to continue in his employ any person who has shown himself dishonest or otherwise unfit for the service in which he is engaged; and that the National Labor Relations Act does not abrogate any of these prerogatives, nor can employees use it as a shield for dishonesty or incompetent and inefficient service.

National Labor Relations Board v. Thompson Products, Inc., 97 Fed. (2nd) 13.

The collection of the employer's money and its conversion to the use of the employee, is dishonest, and is made a crime by the Maryland Statute. It will be readily seen that these two decisions are therefore in conflict.

The United States Circuit Court of Appeals for the Fourth Circuit Has Decided an Important Question of Local Law in a Way Probably in Conflict with the Maryland Statute and in Conflict with Applicable Maryland Decisions.

We submit that this point has been fully covered. Certainly the sanction by the National Labor Relations Board and the Circuit Court of specific acts of "embezzlement" within the State of Maryland is in conflict with the State Statute cited above and the decision in *Crouse v. State of Maryland*, 163 Md. 431.

The Maryland Statute.

"Whosoever being a cashier, servant, agent, or clerk to any person, or whosoever being a cashier, servant, agent, officer or clerk to any body corporate, or being employed for the purpose or in the capacity of a cashier, servant, agent, officer or clerk, by any person or body corporate shall fraudulently embezzle any money, goods, bill, note, bond, check, evidence or debt, or other valuable security or effects which, or any part whereof, shall be delivered to or received, or taken into possession by him for or in the name or on account of his master or employer, shall be deemed to have feloniously stolen the same from his master or employer, although such money, goods, bill, note, bond, check, evidence of debt, or other valuable security or effects was not received into the possession of such master or employer, otherwise than by the actual possession of his cashier, servant, agent, officer, clerk or other person so employed, and being convicted, thereof, shall be punished by imprisonment in the jail or house of correction, for not more than three years, or in the penitentiary for not more than fifteen years. In every indictment for a violation of this Section, when the offense shall relate to coin or notes circulating as money, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or notes circulating as money; and such allegations, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount of coin or notes circulating as money, although the particular species

of coin or notes circulating as money, of which such amount was composed, shall not be proved."

Section 140, Article 27, Annotated Code of Maryland.

The Crouse Case.

Crouse was the cashier of the Pleasant Valley Bank of Carroll County, Maryland. He received into his possession money belonging to the Bank. He was indicted, demurred to the indictment, was tried and convicted. The only question raised on appeal was the ruling on the demurrer to the indictment. Appellant contended that the indictment was defective because it failed to assert that the acts with which he was charged were feloniously committed by him. The Court held that actual felonious intent is not a necessary element of the crime created by the Statute. Felonious intent is a conclusion of law from the commission of the crime described in the Statute.

Crouse v. State of Maryland, 163 Md. 431.

The Fansteel Case.

The Fansteel Metallurgical Corporation refused to reinstate certain Union members employed by the corporation who had engaged in a "sit down" strike. The National Labor Relations Board ordered the corporation to reinstate these employees and upon the question of the authority of Board to so require, Mr. Chief Justice Hughes, speaking for this Court, said:

"The seizure and holding of the buildings was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force

instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society. ***

"We are unable to conclude that Congress intended to compel employers to retain persons in their employ regardless of their unlawful conduct,—to invest those who go on strike with an immunity from discharge for acts of trespass or violence against the employer's property, which they would not have enjoyed had they remained at work. ***

"The important point is that respondent stood absolved by the conduct of those engaged in the 'sit-down' from any duty to reemploy them, but respondent was nevertheless free to consider the exigencies of its business and to offer reemployment if it chose. In so doing it was simply exercising its normal right to select its employees."

National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U. S. 240.

CONCLUSION.

It has been shown that the question involved in this case is a question of law.

This matter goes deeper than a mere labor controversy. We have here a question of whether a governmental agency should sanction dishonest acts to accomplish purposes it deems paramount. Courts should still hold that money collected by employees should be promptly and properly accounted for; and that obedience to a criminal statute of a Sovereign State having its origin in the year 1820 and affirmed with the adoption of Code of 1939, should be paramount to victory in a labor dispute of much later origin.

Should this Honorable Court deny petitioner's request for a Writ of Certiorari, it will mean that hereafter employees, while on strike, may with impunity, take their employer's money and convert it to their own use, in open defiance of the Criminal Statutes of the State in which they reside.

The facts were sufficiently set out to cause the Circuit Court to apply the Maryland Statute and reverse the Na-

tional Labor Relations Board. Furthermore, the decision of the Circuit Court of Appeals for the Fourth Circuit is in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit, and also the decision of this Court in the Fansteel case. The Court of Appeals of the Fourth Circuit erred in enforcing the order of the Board.

It is therefore respectfully submitted that the Writ of Certiorari should be granted as prayed for, and the decision of the Circuit Court of Appeals should be reviewed.

Respectfully submitted,

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